

# Congress of the United States

Washington, DC 20515

October 23, 2023

The Honorable Janet L. Yellen  
Secretary of the Treasury  
Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington DC 20220

Dear Secretary Yellen:

The Inflation Reduction Act of 2022 (IRA) made an unprecedented investment in green energy to combat the growing threat of climate change and create millions of American jobs. Thanks to these transformative tax incentives, we are closer than ever to meeting President Joe Biden's goal to generate 100 percent clean electricity by 2035.

Recognizing the importance of nuclear energy to a carbon-free future, the IRA created Internal Revenue Code (IRC) § 45U, a first-of-its-kind Zero-Emission Nuclear Power Production Tax Credit to support existing nuclear plants producing the clean power our nation needs. We urge the Department to issue expeditious guidance clarifying the definition of gross receipts consistent with congressional intent.

The definition of gross receipts should account for the geographical differences in energy prices across America and among generators operating in the same region of our country. Relying on national or regional prices instead of a plant's immediate location to estimate gross receipts is inadequate. We urge the Department to use each merchant facility's spot market revenue to determine gross receipts, which would ensure that actual energy prices received by individual generators are accurately reflected.

It is also important the guidance clarifies that realized hedging income and losses associated with a nuclear facility are included in that facility's gross receipts. Longstanding language in Section 1221(a)(7) of the Internal Revenue Code recognizes hedging transactions used by taxpayers to reduce price risk. Merchant generators routinely enter into forward hedges on the price of energy, and subsequent hedging income and losses significantly impact the facility's earnings in the year they are realized. This reality must be reflected in the Department's guidance.

Finally, a qualified nuclear facility should be defined as a single reactor, as is the case for the Advanced Nuclear Production Tax Credit under Section 45J. This is crucial because the economic viability of a nuclear facility is evaluated by nuclear owners at the individual plant level.

We appreciate the Department's commitment last month to issue guidance on several clean energy tax incentives before the end of this year. However, this commitment must include providing swift clarity for our nation's nuclear sector. The purpose of Section 45U is to support existing zero-emission nuclear plants and prevent their premature closure. Guidance is needed for generators to make informed decisions that ensure the long-term stability of our nuclear sector, which supports nearly half a million well-paying jobs. This continuity is essential to our fight against the negative impacts of climate change.

New Jersey is a leader in clean power, generating over 40% of its electricity from zero-emission nuclear. Expeditious guidance is particularly important for our state. The New Jersey nuclear plants are supported by the NJ Zero Emission Certificate (ZEC) program until May 2025. The application deadline for plants to apply for

the next three years, beginning June 2025-May 2028, closes this December. Without immediate guidance from Treasury to understand the implementation of Section 45U, the state nuclear plants could face a lapse in the necessary financial and regulatory certainty important to making planned investments and creating jobs.

Given the importance of these zero carbon emitting resources to regional decarbonization efforts and the regional economy, we respectfully request that the Department prioritize guidance on Section 45U in the coming months to ensure final regulations are in place by year end.

Accordingly, we urge you to issue guidance before the end of the year by providing a clear definition of gross receipts that is based on spot market revenue and inclusive of hedging transactions. Thank you very much for your time and attention to our request. We look forward to working together on implementing the landmark Inflation Reduction Act.

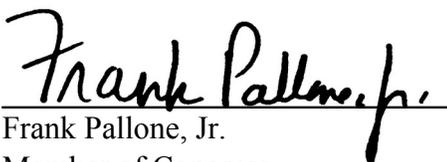
Sincerely,



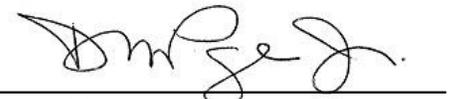
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Member of Congress



Cory A. Booker  
United States Senator



Frank Pallone, Jr.  
Member of Congress



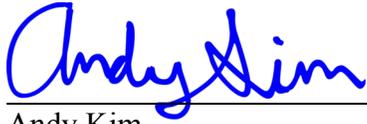
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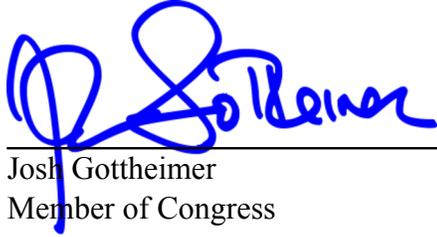
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Andy Kim  
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